SUPREME COURT, U. S.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1970

Supreme Court, U.S.
FILED
JAN 14 1971
E. ROBERT SEAVER, CLERK

No. 49 Original

STATE OF ILLINOIS, ex rel.
WILLIAM J. SCOTT, Attorney General of Illinois,

Plaintiff,

vs.

CITY OF MILWAUKEE, WISCONSIN, a municipality incorporated under the laws of the State of Wisconsin, and a political subdivision thereof, and

CITY OF KENOSHA, WISCONSIN, a municipality incorporated under the laws of the State of Wisconsin, and a political subdivision thereof, and

CITY OF RACINE, WISCONSIN, a municipality incorporated under the laws of the State of Wisconsin, and a political subdivision thereof, and

CITY OF SOUTH MILWAUKEE, WISCONSIN, a municipality incorporated under the laws of the State of Wisconsin, and a political subdivision thereof, and

THE SEWERAGE COMMISSION OF THE CITY OF MILWAUKEE, a municipality existing under the laws of the State of Wisconsin, and a political subdivision thereof, and

THE METROPOLITAN SEWERAGE COMMISSION OF THE COUNTY OF MILWAUKEE, a municipality incorporated under the laws of the State of Wisconsin, and a political subdivision thereof,

Defendants.

BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE THE BILL OF COMPLAINT

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BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE THE BILL OF COMPLAINT

ORIGINAL JURISDICTION INVOKED "SPARINGLY"

The City of Milwaukee does not contest the allegation that this Court has jurisdiction to entertain plaintiff's proposed Bill of Complaint. Nevertheless, it is respectfully submitted that the Court in the past has stated that with reference to accepting original jurisdiction in certain cases: "* * * our original jurisdiction should be invoked sparingly * * *." *Utah v. United States,* 394 U.S. 89, 89 S. Ct. 761, 22 L. Ed. (2d) 99, 105, and "* * * when the necessity was absolute * * *." *Louisiana v. Texas,* 176 U.S. 1, 20 S. Ct. 251, 44 L. Ed. 347.

The allegations recited in the proposed Bill of Complaint do not demonstrate either a pressing or imperative need for the exercise of jurisdiction by this Court. The City of Milwaukee is discharging its municipal obligations and governmental responsibilities in order to avoid pollution and contamination of water supply on a reasonable basis with due consideration to the practicability and the physical and economic feasibility of securing abatement of any pollution of waters that may be established as being attributable to the City of Milwaukee.

REMEDIES AVAILABLE TO PLAINTIFF

We respectfully submit that the State of Illinois may employ the administrative procedures provided in the Federal Water Pollution Control Act, Title 33, U.S.C.A.; Section 1160 thereof expresses the implementations which are afforded to a state and others under the provisions of that Act.

In the State of Wisconsin, the Wisconsin Department of Natural Resources, existing under the provisions of Chapter 144 of the Wisconsin Statutes, and an agency of that state, is clothed with administrative jurisdiction to deal with Wisconsin municipalities in matters pertaining to water pollution occurring in Lake Michigan, and the Wisconsin Department of Natural Resources is also capable of cooperating with other states under the Federal Water Pollution Control Act. Accordingly, Northern Illinois municipalities contributing to the pollution of Lake Michigan and subservient to the authority of the State of Illinois are, like Wisconsin municipalities, subservient to the authority of the Federal Water Pollution Control Act.

An evenhanded approach with reference to any alleged problem of water pollution prompts the view as well as the legal argument that the administrative procedures already established, open both to the State of Illinois and the State of Wisconsin, appear to be ample to deal effectively with water pollution problems in Lake Michigan, if such problems exist.

Accordingly, on this basis of approach we respectfully submit that whatever may be the seriousness attached to the claimed circumstances of water pollution in Lake Michigan as urged by the State of Illinois through its Attorney General, such circumstances can be adequately met administratively.

WHEREFORE, the defendant City of Milwaukee respectfully prays that the Motion made by plaintiff for relief to File a Bill of Complaint be denied.

Respectfully submitted,

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